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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/033,679 | 12/27/2001 | Edward B. Bretschger | 28312/36075 | 9368 |

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EXAMINER

LUU, TUYET PHUONG PHAM

ART UNIT

PAPER NUMBER

3673

DATE MAILED: 05/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 12-27-01
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire _____ month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-22 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-12, 14-16, 18, 19 is/are rejected.
- ☒ Claim(s) 1-3, 17, 20-22 is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --

DETAILED ACTION

Claim Objections

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 18-21 have been renumbered 19-22.

2. Claims 15 and 16 recite the limitation "the vibrating part". However, there is insufficient antecedent basis for this limitation in the claims.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-9, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,425,655 to Tompkins in view of U.S. Patent No. 5,611,771 to Taylor.

Tompkins discloses a mattress comprising an internal support structure (39), an external cladding (43, 44, 45) that surrounds and covers at least a portion of the support structure, and a self-contained mattress vibrating device (6) having a motor. Tompkins fails to disclose that the vibrating device gradually slows to a controlled rate to a complete stop over a period of time when turned off. However, Taylor discloses a massager that gradually slows to a controlled rate to a complete stop over a period of time. Thus it would have been obvious to one having

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ordinary skill in the art at the time the invention was made to modify the vibrating device of Tompkins so that the massager gradually slows to a controlled rate to a complete stop over a period of time , so as to prevent the sudden cessation of massage action which can abruptly awaken the user.

Taylor further teaches that the massager can be selectively operated at different vibration levels. Thus, it would have further been obvious to one having ordinary skill in the art at the time the invention was made to provide the massager with different vibration levels so as to provide the user with a variety of vibration selections.

5. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,852,021 to Jessup.

Jessup discloses a vibrating mattress comprising a support structure, a mattress cladding that surrounds and covers at least a portion of the support structure and a vibrating device. Jessup fails to disclose the vibrating device being protected by a water resistant shell that encompasses components of the vibrating device. However, the examiner takes Official Notice that it is well known to encase electrical components in water resistant shells so as to protect the components from the elements. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to encase the vibrating device in a water resistant shell so that when used in a waterbed, the vibrating device is protected.

6. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jessup in view of Tompkins.

Jessup discloses the claimed invention except for the components including at least a motor, a vibrating element selectively driven by the motor and a battery providing power to operate the motor. Tompkins discloses a vibrating device comprising a motor and a vibrating element selectively driven by the motor. Electrical current provides power to operate the motor.

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However, it is well known in the electrical art to use a substitute an electrical current with a battery for ease of transportability. Therefore, it would have been obvious to one of ordinary skill in the art to modify Jessup so as to provide a vibrating device which is battery operated for ease of transportability.

Allowable Subject Matter

7. Claims 13, 17 and 20-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Teri Pham Luu** whose telephone number is **(703) 305-7421**. The examiner can be best reached Monday-Friday from 6:30 am to 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Heather Shackelford**, can be reached at **(703) 308-2978**.

Submission of your response by facsimile transmission is encouraged. Technology Center 3600's facsimile number is **(703) 872-9326 (Before Final)**, **(703) 872-9327 (After Finals)** and **(703) 872-9325 (Customer Service)**. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

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I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (703) 305-3597) on _____ (Date) _____

(Typed or printed name of person signing this certificate)

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be directed to **heather.shackelford@uspto.gov**.

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed expressed waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature relating to the status of this application should be directed to the group receptionist at **(703) 308-2168**.



Teri Pham Luu
Primary Examiner

tpl
May 5, 2003